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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NEXUS DISPLAY
TECHNOLOGIES LLC,
Plaintiff,

vs.

HEWLETT-PACKARD COMPANY,
Defendant.

HEWLETT-PACKARD COMPANY,
Counter-Plaintiff,

vs.

NEXUS DISPLAY TECHNOLOGIES,
LLC,
Counter-Defendant.

Case No. 2:15-CV-02402-TJH-JC

Hon. Terry J. Hatter, Jr.

PROTECTIVE ORDER

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18
19 **1. A. PURPOSES AND LIMITATIONS**

20 Disclosure and discovery activity in this action are likely to involve
21 production of confidential, proprietary, or private information for which special
22 protection from public disclosure and from use for any purpose other than
23 prosecuting this litigation may be warranted. Accordingly, the parties hereby
24 stipulate to and petition the court to enter the following Stipulated Protective
25 Order. The parties acknowledge that this Order does not confer blanket protections
26 on all disclosures or responses to discovery and that the protection it affords from
27 public disclosure and use extends only to the limited information or items that are
28 entitled to confidential treatment under the applicable legal principles. The parties
further acknowledge, as set forth in Section 14.4, below, that this Stipulated
Protective Order does not entitle them to file confidential information under seal.
Rather, C.D. Cal. Civ. L.R. 79-5 and any pertinent orders of the assigned District

Judge and Magistrate Judge set forth the procedures that must be followed and the standards that will be applied, when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

In light of the nature of the claims and allegations in this case and the Parties' representations that discovery in this case will involve the production of confidential records, and in order to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties are entitled to keep confidential, to ensure that the Parties are permitted reasonable necessary uses of such material in connection with this action, to address their handling of such material at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter. The Parties shall not designate any information/documents as confidential without a good faith belief that such information/documents have been maintained in a confidential, non-public manner, and that there is good cause or a compelling reason why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.”

3 2.5 Disclosure or Discovery Material: all items or information, regardless
4 of the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced
6 or generated in disclosures or responses to discovery in this matter.

7 2.6 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who (1) has been retained by a Party or its counsel to
9 serve as an expert witness or as a consultant in this action, (2) is not a past or
10 current employee of a Party or of a Party’s competitor, and (3) at the time of
11 retention, is not anticipated to become an employee of a Party or of a Party’s
12 competitor.

13 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 Information or Items: extremely sensitive “Confidential Information or Items,”
15 disclosure of which to another Party or Non-Party would create a substantial risk of
16 serious harm that could not be avoided by less restrictive means.

17 2.8 House Counsel: no more than four attorneys who are employees of a
18 party to this action. House Counsel does not include Outside Counsel of Record or
19 any other outside counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association,
21 or other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this action but are retained to represent or advise a party to this action and
24 have appeared in this action on behalf of that party or are affiliated with a law firm
25 which has appeared on behalf of that party.

1 2.11 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

6 2.13 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 **3. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any deposition testimony,
20 conversations, or presentations by Parties or their Counsel that might reveal
21 Protected Material, other than during a court hearing or at trial.

22 Any use of Protected Material during a court hearing or at trial shall be
23 governed by the orders of the presiding judge. This Order does not govern the use
24 of Protected Material during a court hearing or at trial.

25
26 The protections conferred by this Stipulation and Order do not cover the
27 following information: (a) any information that is in the public domain at the time

1 of disclosure to a Receiving Party or becomes part of the public domain after its
2 disclosure to a Receiving Party as a result of publication not involving a violation
3 of this Order, including becoming part of the public record through trial or
4 otherwise; and (b) any information known to the Receiving Party prior to the
5 disclosure or obtained by the Receiving Party after the disclosure from a source
6 who obtained the information lawfully and under no obligation of confidentiality to
7 the Designating Party.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this action,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
15 including the time limits for filing any motions or applications for extension of
16 time pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. To the extent it is practical to do so, the
22 Designating Party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify – so that other
24 portions of the material, documents, items, or communications for which
25 protection is not warranted are not swept unjustifiably within the ambit of this
26 Order.

1 Mass, indiscriminate, or routinized designations are prohibited.
2 Designations that are shown to be clearly unjustified or that have been made for an
3 improper purpose (e.g., to unnecessarily encumber or retard the case development
4 process or to impose unnecessary expenses and burdens on other parties) expose
5 the Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection at all or do not qualify for
8 the level of protection initially asserted, that Designating Party must promptly
9 notify all other parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in
11 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
12 stipulated, ordered or agreed to by the Parties, Disclosure or Discovery Material
13 that qualifies for protection under this Order must be clearly so designated before
14 the material is disclosed or produced. Designation in conformity with this Order
15 requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that
20 contains protected material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the
22 protected portion(s) (e.g., by making appropriate markings in the margins) and
23 must specify, for each portion, the level of protection being asserted.

24 A Party or Non-Party that makes original documents or materials available
25 for inspection need not designate them for protection until after the inspecting
26 Party has indicated which material it would like copied and produced. During the
27 inspection and before the designation, all of the material made available for

1 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.” After the inspecting Party has identified the documents it wants copied
3 and produced, the Producing Party must determine which documents, or portions
4 thereof, qualify for protection under this Order. Then, before producing the
5 specified documents, the Producing Party must affix the appropriate legend
6 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY”) to each page that contains Protected Material. If only a portion or
8 portions of the material on a page qualifies for protection, the Producing Party also
9 must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins) and must specify, for each portion, the level of protection
11 being asserted.

12 (b) for testimony given in depositions that the Designating Party
13 identifies on the record, before the close of the deposition, all the protected
14 testimony and specify the level of protection being asserted.

15 When it is impractical to identify separately each portion of testimony
16 that is entitled to protection and it appears that substantial portions of the testimony
17 may qualify for protection, the Designating Party may invoke on the record (before
18 the deposition is concluded) a right to have up to 21 days to identify the specific
19 portions of the testimony as to which protection is sought and to specify the level
20 of protection being asserted. Only those portions of the testimony that are
21 appropriately designated for protection within the 21 days shall be covered by the
22 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
23 may specify, at the deposition or up to 21 days afterwards if that period is properly
24 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other parties notice if they reasonably expect a
27 deposition to include Protected Material so that the other parties can ensure that

1 only authorized individuals who have signed the “Acknowledgment and
2 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of
3 a document as an exhibit at a deposition shall not in any way affect its designation
4 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY.”

6 Transcripts containing Protected Material shall have an obvious legend on
7 the title page that the transcript contains Protected Material, and the title page shall
8 be followed by a list of all pages (including line numbers as appropriate) that have
9 been designated as Protected Material and the level of protection being asserted by
10 the Designating Party. The Designating Party shall inform the court reporter of
11 these requirements. Any transcript that is prepared before the expiration of a 21-
12 day period for designation shall be treated during that period as if it had been
13 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
14 entirety unless otherwise agreed. After the expiration of that period, the transcript
15 shall be treated only as actually designated.

16 (c) for information produced in some form other than documentary
17 and for any other tangible items, that the Producing Party affix in a prominent
18 place on the exterior of the container or containers in which the information or
19 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
21 item warrants protection, the Producing Party, to the extent practicable, shall
22 identify the protected portion(s) and specify the level of protection being asserted.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive
25 the Designating Party’s right to secure protection under this Order for such
26 material. Upon timely correction of a designation, the Receiving Party must make
27

1 reasonable efforts to assure that the material is treated in accordance with the
2 provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time that is consistent with the Court's
6 scheduling order. Unless a prompt challenge to a Designating Party's
7 confidentiality designation is necessary to avoid foreseeable, substantial
8 unfairness, unnecessary economic burdens, or a significant disruption or delay of
9 the litigation, a Party does not waive its right to challenge a confidentiality
10 designation by electing not to mount a challenge promptly after the original
11 designation is disclosed.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
13 resolution process by providing written notice of each designation it is challenging
14 and describing the basis for each challenge. To avoid ambiguity as to whether a
15 challenge has been made, the written notice must recite that the challenge to
16 confidentiality is being made in accordance with this specific paragraph of the
17 Protective Order. The parties shall attempt to resolve each challenge in good faith
18 and must begin the process by conferring directly (in voice to voice dialogue; other
19 forms of communication are not sufficient) within 10 days of the date of service of
20 notice, unless relieved by written order of the Court upon good cause shown. In
21 conferring, the Challenging Party must explain the basis for its belief that the
22 confidentiality designation was not proper and must give the Designating Party an
23 opportunity to review the designated material, to reconsider the circumstances,
24 and, if no change in designation is offered, to explain the basis for the chosen
25 designation. A Challenging Party may proceed to the next stage of the challenge
26 process only if it has engaged in this meet and confer process first or establishes
27 that the Designating Party is unwilling to participate in the meet and confer process

1 in a timely manner. For avoidance of any doubt, any proceedings under this
2 section must also comply with C.D. Cal. Civ. L.R. 37.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Challenging Party shall file and serve a motion to challenge
5 confidentiality within 21 days of the initial notice of challenge or within 14 days of
6 the parties agreeing that the meet and confer process will not resolve their dispute,
7 whichever is earlier. Each such motion must be accompanied by a competent
8 declaration affirming that the movant has complied with the meet and confer
9 requirements imposed in the preceding paragraph. Provided that those
10 requirements are met, the Challenging Party may file a motion challenging a
11 confidentiality designation, including a challenge to the designation of a deposition
12 transcript or any portions thereof, at any time that is not inconsistent with the
13 Court's Scheduling Order, if there is good cause for doing so. Any motion brought
14 pursuant to this provision must be accompanied by a competent declaration
15 affirming that the movant has complied with the meet and confer requirements
16 imposed by the preceding paragraph.

17 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges and those made for an improper purpose
19 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
20 expose the Challenging Party to sanctions. Unless the Designating Party has
21 waived the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the
23 Producing Party's designation until the court rules on the challenge. For avoidance
24 of any doubt, any proceedings under this section must also comply with C.D. Cal.
25 Civ. L.R. 37.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material that
 3 is disclosed or produced by another Party or by a Non-Party in connection with this
 4 case only for prosecuting, defending, or attempting to settle this litigation. Such
 5 Protected Material may be disclosed only to the categories of persons and under
 6 the conditions described in this Order. When the litigation has been terminated, a
 7 Receiving Party must comply with the provisions of Section 15 below (FINAL
 8 DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
 10 location and in a secure manner that ensures that access is limited to the persons
 11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 13 otherwise ordered by the court or permitted in writing by the Designating Party, a
 14 Receiving Party may disclose any information or item designated
 15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as
 17 well as employees of said Outside Counsel of Record to whom it is reasonably
 18 necessary to disclose the information for this litigation and who have signed the
 19 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
 20 A;

21 (b) the officers, directors, and employees (including House Counsel)
 22 of the Receiving Party to whom disclosure is reasonably necessary for this
 23 litigation and who have signed the “Acknowledgment and Agreement to Be
 24 Bound” (Exhibit A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
 26 disclosure is reasonably necessary for this litigation and who have signed the
 27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants,
3 and Professional Vendors to whom disclosure is reasonably necessary for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A); and

6 (f) the author or recipient of a document containing the information or
7 a custodian or other person who otherwise possessed or knew the information.

8 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
9 ONLY" Information or Items. Unless otherwise ordered by the court or permitted
10 in writing by the Designating Party, a Receiving Party may disclose any
11 information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
12 EYES ONLY" only to:

13 (a) the Receiving Party's Outside Counsel of Record in this action and
14 employees of said Outside Counsel of Record to whom it is reasonably necessary
15 to disclose the information for this litigation, as well as contract attorneys of said
16 Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation and who have signed the "Acknowledgment and
18 Agreement to be Bound" that is attached hereto as Exhibit A;

19 (b) Experts (as defined in this Order) of the Receiving Party (1) to
20 whom disclosure is reasonably necessary for this litigation; (2) who have signed
21 the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and (3) as to
22 whom the procedures set forth in paragraph 7.4(a), below, have been followed;

23 (c) the court and its personnel;

24 (d) court reporters and their staff, professional jury or trial consultants,
25 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
26 for this litigation and who have signed the "Acknowledgment and Agreement to
27 Be Bound" (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony,

¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements but must also disclose that information has been withheld, and the

1 including through a declaration, report, or testimony at a deposition or trial, during
2 the preceding five years.

3 (b) A Party that makes a request and provides the information
4 specified in the preceding respective paragraphs may disclose the subject Protected
5 Material to the identified Expert after 14 days from the disclosure unless, within 14
6 days of delivering the request, the Party receives a written objection from the
7 Designating Party. Any such objection must set forth in detail the grounds on
8 which it is based and must request a conference. Consistent with the requirements
9 of C.D. Cal. Civ. L.R. 37-1, a Party that receives a timely written objection must
10 meet and confer with the Designating Party (through direct voice to voice
11 dialogue) to try to resolve the matter by agreement within 10 days of receiving the
12 written objection, unless relieved by written order of the Court upon good cause
13 shown.

14 (c) If no agreement is reached, the Party seeking to make the
15 disclosure to the Expert may file a motion seeking permission from the court to do
16 so. Any such motion must describe the circumstances with specificity, set forth in
17 detail the reasons why the disclosure to the Expert is reasonably necessary, assess
18 the risk of harm that the disclosure would entail, and suggest any additional means
19 that could be used to reduce that risk. In addition, any such motion must be
20 accompanied by a competent declaration describing the parties' efforts to resolve
21 the matter by agreement (i.e., the extent and the content of the meet and confer
22
23

24
25 Party seeking to disclose to the Expert shall be available to meet and confer with
26 the Designating Party regarding any such engagement.
27

1 discussions) and setting forth the reasons advanced by the Designating Party for its
2 refusal to approve the disclosure.

3 In any such proceeding, the Party opposing disclosure to the Expert shall
4 bear the burden of proving that the risk of harm that the disclosure would entail
5 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
6 the Protected Material to its Expert.

7 **8. PROSECUTION BAR**

8 Absent written consent from the Producing Party, any individual on behalf
9 of the Plaintiff who reviews "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
10 ONLY" information shall not be involved in the prosecution of patents or patent
11 applications claiming the specific subject matter of the reviewed information
12 marked "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY", before any
13 foreign or domestic agency, including the United States Patent and Trademark
14 Office ("the Patent Office"). For purposes of this paragraph, "prosecution"
15 includes directly or indirectly drafting, amending, advising, or otherwise affecting
16 the scope or maintenance of patent claims (including, for example, original
17 prosecution, reissue, *ex parte* reexamination, or *inter partes* review). To avoid any
18 doubt, this paragraph does not preclude an individual who has reviewed "HIGHLY
19 CONFIDENTIAL-ATTORNEYS' EYES ONLY" material from representing a
20 party before a domestic or foreign agency (including, but not limited to, a reissue
21 protest, *ex parte* reexamination, or *inter partes* review) so long as the individual is
22 not involved with the modification of claims.

23 Notwithstanding the duration limitations imposed by section 4 above, this
24 Prosecution Bar shall begin when "HIGHLY CONFIDENTIAL – ATTORNEYS'
25 EYES ONLY" information is first reviewed by the affected individual and shall
26 end two (2) years after final termination of this action with respect to the party or
27 parties represented by the affected individual. The parties expressly agree that the

1 Prosecution Bar set forth herein shall be personal to any attorney who reviews
2 Prosecution Bar materials and shall not be imputed to any other persons or
3 attorneys at the attorneys' law firm. It is expressly agreed that attorneys who work
4 on this matter without reviewing Prosecution Bar materials shall not be restricted
5 from engaging in prosecution activity on matters that fall within the Prosecution
6 Bar.

7 Notwithstanding anything in this section to the contrary, nothing in this
8 provision shall prohibit any attorney of record in this litigation from discussing any
9 aspect of this case that is reasonably necessary for the prosecution or defense of
10 any claim or counterclaim in this litigation with his/her client, so long as the
11 discussion does not reveal any information protected by the Prosecution Bar.

12 Further notwithstanding anything in this section to the contrary, receipt or
13 review of the following documents and materials shall not trigger the Prosecution
14 Bar set forth above: (i) publicly available publications, including patents and
15 published patent applications; (ii) materials regarding third-party systems or
16 products that were publicly known, on sale, or in public use; (iii) information that
17 is otherwise publicly available; and (iv) documents and information related solely
18 to damages or reasonable royalty rates.

19 **9. SOURCE CODE**

20 Defendant hereby represents that it does not have in its possession, custody
21 or control source code relevant to the infringement theories propounded by
22 Plaintiff in its infringement contentions. In reliance on this representation, Plaintiff
23 represents that it does not anticipate seeking discovery of source code from
24 Defendant. To the extent third party source code is necessary for any party to
25 pursue its claims or defenses, the Parties agree to promptly work together in good
26 faith to enter into source code provisions that address the confidentiality concerns
27 of those third parties.

**10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.²

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these

² The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or

control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.³ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

³ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to

1 **14. MISCELLANEOUS**

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of
3 any person to seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order, including the relevance of source code to this
8 litigation. Similarly, no Party waives any right to object on any ground to use in
9 evidence of any of the material covered by this Protective Order.

10 14.3 Export Control. Disclosure of Protected Material shall be subject to
11 all applicable laws and regulations relating to the export of technical data
12 contained in such Protected Material, including the release of such technical data to
13 foreign persons or nationals in the United States or elsewhere. The Producing
14 Party shall be responsible for identifying any such controlled technical data, and
15 the Receiving Party shall take measures necessary to ensure compliance.

16 14.4 Filing Protected Material. This Protective Order does not entitle the
17 parties to file materials under seal with the Court. Rather, a Party that seeks to file
18 under seal any Protected Material shall comply with C.D. Cal. Civ. L.R. 79-5,
19 entitled "Confidential Court Records – Under Seal," and with any pertinent orders
20 of the assigned District Judge and Magistrate Judge. Protected Material may only
21 be filed under seal pursuant to a court order authorizing the sealing of the specific
22 Protected Material at issue. If a Party's request to file Protected Material under
23

24
25
26 protect its confidentiality interests in this court.
27

1 seal is denied by the court, then the Receiving Party may file the information in the
2 public record unless otherwise instructed by the court.

3 **15. FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in
5 paragraph 4, each Receiving Party must, at its own discretion, either return all
6 Protected Material to the Producing Party or destroy such material. As used in this
7 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving
10 Party must submit a written certification to the Producing Party (and, if not the
11 same person or entity, to the Designating Party) by the 60-day deadline that (1)
12 identifies (by category, where appropriate) all the Protected Material that was
13 returned or destroyed and (2) affirms that the Receiving Party has not retained any
14 copies, abstracts, compilations, summaries or any other format reproducing or
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel
16 are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
18 and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain Protected Material. Any such
20 archival copies that contain or constitute Protected Material remain subject to this
21 Protective Order as set forth in Section 4 (DURATION).

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 Dated: June 3, 2016

**AHMAD, ZAVITSANOS, ANAIPAKOS,
ALAVI, MENSING P.C.**

4
5 /s/Alisa Lipski

6 Alisa A. Lipski,
7 Attorney for Plaintiff Nexus Display
Technologies LLC

8 Dated: June 3, 2016

MORGAN, LEWIS & BOCKIUS LLP

9
10 /s/Adam A. Allgood

11 Adam A. Allgood
12 Attorney for Defendant HP Inc. f/k/a/
Hewlett-Packard Company

13
14
15 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

16
17
18 DATED: June 8, 2016

/s/

19 Honorable Jacqueline Chooljian
20 United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on June 8, 2016 in the following case:

- *Nexus Display Technologies, LLC v. Hewlett-Packard Company*, No. 2:15-cv-02402-TJH-JC.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of

[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____